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ALEXANDER L. STEVAS,
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No. 82-274

IN THE

Supreme Court of the United States

October Term, 1982

COMMONWEALTH OF PENNSYLVANIA, et al.,
Petitioners

v.

DELAWARE VALLEY CITIZENS COUNCIL FOR CLEAN AIR, et al.

and

UNITED STATES OF AMERICA,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION OF DELAWARE VALLEY CITIZENS COUNCIL, ET AL.

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198

COUNTER-STATEMENT OF PETITIONERS' QUESTIONS

1. Whether a state which fails to comply with a consent decree judgment can be held in civil contempt?

2. Whether a court can impose a civil contempt sanction modeled on a statutory administrative sanction?

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF PETITIONERS' QUESTIONS	1
TABLE OF AUTHORITIES	iii
COUNTER-STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	6
Summary	6
A. District Court Did Not Commit Error in Declaring Commonwealth Defendants to Be in Civil Contempt	7
1. The District Court's Contempt Citation Does Not Interfere With the Commonwealth's Appropriation Process	8
2. The District Court's Contempt Citation Is Not in Conflict With *New York State Ass'n For Retarded Children, Inc. v. Carey*, 631 F. 2d 162 (2nd Cir. 1980)	11
3. The Commonwealth's Self Imposed Inability to Comply With the Consent Decree Does Not Excuse Its Civil Contempt	12
B. The Contempt Sanction Does Not Abuse the Court's Discretion Nor Does It Conflict With Decisions of the Other Circuits	13
1. The Contempt Sanction Does Not Conflict With *State Highway Commission of Missouri v. Volpe*, 479 F. 2d 1099 (8th Cir. 1973)	14
2. The Contempt Sanction Does Not Conflict With *Gautreaux v. Romney*, 457 F. 2d 124 (7th Cir. 1972)	16
3. The Contempt Sanction Does Not Impermissibly Intrude on the Operations of the Commonwealth and Does Not Conflict With *Rizzo v. Goode*, 423 U. S. 362 (1973)	17
CONCLUSION	19

TABLE OF AUTHORITIES

Cases:	Page
Bell v. Wolfish, 441 U. S. 520 (1979)	17
Burd v. Commonwealth of Pennsylvania, 443 A. 2d 1197 (Pa. Cmwlth. Ct. 1982)	3, 4, 5, 9
Commonwealth v. Sutley, 378 A. 2d 780 (Pa. 1977)	9
Commonwealth of Pennsylvania v. Environmental Protection Agency, 500 F. 2d 246 (3d Cir. 1974)	2
Delaware Valley Citizens Council for Clean Air v. Commonwealth of Pennsylvania:	
#76-2068, #77-619 (E. D. Pa. 5/20/81)	4
#76-2068, #77-619 (E. D. Pa. 6/16/81)	4
533 F. Supp. 869 (E. D. Pa. 1/22/82)	5, 8, 9
674 F. 2d 970 (3d Cir. 3/1/82)	9
674 F. 2d 976 (3d Cir. 3/1/82)	4
678 F. 2d 470 (3d Cir. 5/21/82)	1
Edelman v. Jordan, 415 U. S. 651 (1974)	7
Euresti v. Stenner, 458 F. 2d 1115 (10th Cir. 1972)	10
Gautreaux v. Romney, 457 F. 2d 124 (7th Cir. 1972)	16, 17
Hutto v. Finney, 437 U. S. 678 (1978)	7
Interdynamics, Inc. v. Wolf, 653 F. 2d 93 (3d Cir. 1981)	7
Lemon v. Kurtzman, 411 U. S. 192 (1973)	13
Maggio v. Zietz, 330 U. S. 56 (1948)	12
National League of Cities v. Usery, 426 U. S. 833 (1976)	10
New York State Ass'n For Retarded Children, Inc. v. Carey:	
492 F. Supp. 1110 (E. D. N. Y. 1980)	11
631 F. 2d 162 (2d Cir. 1980)	8, 11
Rizzo v. Goode, 423 U. S. 362 (1976)	17, 18
Shapp v. Sloane, 391 A. 2d 595 (Pa. 1978); *appeal dismissed sub nom.*, Thornburgh v. Casey, 440 U. S. 942 (1979)	10
Shillitani v. United States, 384 U. S. 364 (1966)	12
State Highway Commission of Missouri v. Volpe, 479 F. 2d 1099 (8th Cir. 1973)	14

TABLE OF AUTHORITIES (Continued)

Cases (Continued): Page

Toll v. Moreno, — U. S. —, 50 U. S. L. W. 4880 (6/28/82) 7
United States v. Mississippi, 380 U. S. 128 (1965) 7
United States v. Peters, 9 U. S. 115 (1809) 9
United States v. United Mine Workers of America, 330 U. S. 258 (1947) 13
Vecchione v. Wohlgemuth, 558 F. 2d 150 (3d Cir. 1977); *cert. den.*, 434 U. S. 943 (1977) 7, 8, 9
Washington v. Washington State Commercial Passenger Fishing Vessel Association, 442 U. S. 658 (1979) 9

Constitutional Provisions:

United States Constitution:
Article 1, Section 8, Clause 6 14
Article 1, Section 10, Clause 1 9
Article 6, Clause 2 9
Pennsylvania Constitution:
Article 1, Section 17 9
Article 3, Section 24 10

Statutes:

United States:
Clean Air Act of 1970, 42 U. S. C. § 1857 et seq. 2
Clean Air Act of 1977, 42 U. S. C. § 7401 et seq. 2
Clean Air Act of 1977, 42 U. S. C. §§ 7501-7508 ..... 3, 15
Clean Air Act of 1977, 42 U. S. C. § 7502 ..... 3, 15
Clean Air Act of 1977, 42 U. S. C. § 7506(a) ..3, 4, 10, 12, 13, 14
Clean Air Act of 1977, 42 U. S. C. § 7604 3
Pennsylvania:
71 P. S. 523, House Bill 456, § 2, Act 99-1981 (10/5/81) 5
71 P. S. 293, Administrative Code § 903 8
71 P. S. 834, Act #154-1972 (6/16/72) 2

TABLE OF AUTHORITIES (Continued)

Regulations:	Page
United States:	
38 Fed. Reg. 32884 (11/28/73)	2
40 CFR 52.2037	2
40 CFR 52.2038	2
45 Fed. Reg. 33807 (5/20/80)	4

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BRIEF IN OPPOSITION OF DELAWARE VALLEY CITIZENS COUNCIL FOR CLEAN AIR, et al.

Respondents, the Delaware Valley Citizens Council for Clean Air, et al., respectfully request the Court to deny the petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Third Circuit reported at 678 F. 2d 470 (3d Cir. 1982) which is reproduced in petitioners' Appendix at 50a to 68a.

COUNTER-STATEMENT OF THE CASE

In accordance with the federal Clean Air Act of 1970,[1] the Administrator of the U. S. Environmental Protection Agency (EPA) promulgated the Pennsylvania Transportation Control Plan (TCP). 38 Fed. Reg. 32884 (11/28/73), 40 CFR 52.2037 et seq. The TCP is the phase of Pennsylvania's overall State Implementation Plan (SIP) intended to reduce harmful emissions of carbon monoxide and ozone-forming hydrocarbons from mobile sources and thereby to help attain compliance with EPA's national ambient air quality standards for those pollutants.

The TCP promulgated by the EPA included an auto emissions inspection and maintenance (I/M) program which was to be implemented by May 1, 1975. 40 CFR 52.2038.[2] Even before the EPA promulgated the I/M program requirement the Pennsylvania legislature, in 1972, had authorized the Pennsylvania Department of Transportation to establish such a program. Act #154 (6/16/72), 75 P. S. 834. And the Commonwealth did not seek court review of the I/M program requirement or of the I/M program implementation date though the Commonwealth had petitioned for court review of other aspects of the TCP. *Commonwealth of Pennsylvania v. Environmental Protection Agency*, 500 F. 2d 246 (3d Cir. 1974).

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1. When enacted in 1970 the Clean Air Act was codified at 42 U. S. C. § 1857, et seq. With passage of the 1977 Amendments the Act was recodified at 42 U. S. C. § 7401, et seq. All references to the Clean Air Act are based on the post 1977 recodification.

2. Under the Clean Air Act of 1970 the inclusion of an I/M program in a state SIP was optional with the state. Under the Clean Air Act Amendments of 1977 the inclusion of an I/M program was mandatory for Pennsylvania and other states which could not attain carbon monoxide or ozone standards by December 31, 1982.

When the Commonwealth failed to implement the I/M program by mid-1976 the Delaware Valley Citizens' Council for Clean Air (Delaware Valley) brought a citizens lawsuit under 42 U. S. C. § 7604, against the Commonwealth defendants and the EPA. Early in 197. the EPA instituted its own action against the same Commonwealth defendants and the EPA was dismissed as a defendant in the former action. The actions were then consolidated.

The parties engaged in extended discovery and negotiations to resolve the case. While these negotiations were proceeding Congress enacted the Clean Air Act Amendments of 1977, P. L. 95-95 (8/7/77). A significant aspect of the 1977 Amendments was the enactment of Part D, §§ 171-178 inclusive, 42 U. S. C. §§ 7501-7508, which concerned regions of the nation that had not attained compliance with EPA's ambient air standards. Under Part D the Commonwealth was required to implement an I/M program, 42 U. S. C. § 7502(b)(11)(B), to qualify for certain federal-aid highway grants, 42 U. S. C. § 7506(a).

The parties entered into a consent decree in August 1978 which obligated the defendants to implement an I/M program [3] in those areas of Pennsylvania where the Commonwealth would not be able to attain national air quality standards by December 31, 1982. At the time the consent decree was filed legislative authorization for an I/M program already existed. *Burd v. Commonwealth of Pennsylvania*, 443 A. 2d 1197 (Pa. Cmwlth. Ct. 1982).

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3. The consent decree of August 1978 required the defendants to implement the I/M program by August 1, 1980. Subsequently the consent decree was modified and the date of implementation was set at May 1, 1981.

In June 1979 the Commonwealth submitted a revised Transportation Control Plan (TCP) to the EPA in order to qualify for federal-aid highway grants. 42 U. S. C. 7506(a)(3). In its TCP submission to EPA the Commonwealth explicitly pledged to implement an I/M program in accordance with the consent decree and the Commonwealth also pledged to provide the necessary funds to operate the program. These pledges qualified the Commonwealth for federal-aid highway grants after July 31, 1979. 45 Fed. Reg. 33607 et seq. (5/20/80). According to the Federal Highway Administration the Commonwealth, since July 31, 1979, has received federal-aid highway grants exceeding one billion dollars, grants which would have been withheld but for the Commonwealth's pledges.

Just two days before the Commonwealth was to implement the I/M program; i.e., on April 29, 1981, the defendants moved to modify the consent decree so as to delay the I/M program start-up until January 1, 1983. The district court denied the motion, declared the defendants to be in violation of the consent decree,[4] and the Court of Appeals affirmed.[5]

The failure of the defendants to meet their consent decree obligations necessitated a further decree modification. Accordingly, on June 16, 1981, the district court modified the consent decree [6] and established May 1, 1982 as the new start-up date. At the time of the June 16 order the Pennsylvania legislature had already authorized the executive branch to implement an I/M program, *Burd v.*

4. *DVCCCA v. Commonwealth*, #76-2068 (E. D. Pa., 5/20/81).

5. *DVCCCA v. Commonwealth*, 674 F. 2d 976 (3d Cir. 3/1/82). Petition for cert. pending, No. 81-2331.

6. *DVCCCA v. Commonwealth*, #76-2068 (E. D. Pa. 6/16/81).

Commonwealth of Pennsylvania, 443 A. 2d 1197 (Pa. Cmwlth. Ct. 1982), and the legislature had appropriated funds for the program in fiscal years 1980, 1981, 1982. Indeed, just one week before the district court order of June 16, 1981 both houses of the Pennsylvania General Assembly had passed the 1981-82 appropriations budget, House Bill 686-5A (1981) (7/1/81), which included funding for the I/M program.

Notwithstanding the legislature's prior authorization and appropriation for the I/M program and notwithstanding the district court's June 16 order, on October 6, 1981, the legislature voted to override Governor Thornburgh's veto and enacted House Bill 456, § 2, Act 99-1981, 71 P. S. 523, which prohibited the expenditure of any funds for the I/M program. Thereafter the defendants stopped all their activities in connection with the consent decree and the district court, on January 22, 1982,[7] declared them to be in civil contempt. The coercive contempt sanction imposed by the court enjoined the U. S. Secretary of Transportation from approving certain grants for federal-aid highway funds under Title 23, U. S. Code, in the Pennsylvania counties covered by the consent decree, except in respect to highway construction for safety, mass transit or transportation projects related to air quality improvements or maintenance. Appendix, p. 32a.

The court order of January 22, 1982 was unanimously affirmed by the Third Circuit, 678 F. 2d 470 (3d Cir. 5/21/82). On September 9, 1982 the Supreme Court denied the defendants petition for a stay (Stay Petition A-103). The defendants now seek a writ of certiorari to review the Third Circuit's affirmation.

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7. *DVCCCA v. Commonwealth*, 533 F. Supp. 869 (E. D. Pa. 1982). See Appendix p. 1a.

REASONS FOR DENYING THE WRIT

Summary

Petitioners seek to challenge the validity of a civil contempt citation and the accompanying contempt sanction, both affirmed unanimously by the Third Circuit. A recitation of the material facts reveals why the citation and the sanction were within the discretion of the district court and fully justified.

Petitioners, including the Commonwealth, entered into a consent decree in 1978 obligating them to implement an auto emission inspection and maintenance (I/M) program by May 1981 to abate air pollution problems. The Commonwealth's legislature authorized such an I/M program in 1972.

In 1979, to qualify for federal-aid highway grants the petitioners made an additional pledge to implement the I/M program of the consent decree. This additional pledge has brought the Commonwealth over one billion dollars in federal-aid highway grants. Notwithstanding, petitioners failed to implement the I/M program in May 1981 and were declared to be in violation of the decree. No sanction was applied and the start-up date was rescheduled to May 1982.

Though the Commonwealth's legislature had appropriated funds for the I/M program in fiscal 1980, 1981, and 1982 the legislature in October 1981 voted to immediately prohibit the expenditure of any public funds for the I/M program. The petitioners were declared to be in civil contempt and, as a sanction, the U. S. Secretary of Transportation was enjoined from approving certain federal-aid highway grants. This sanction, modeled after a provision in the Clean Air Act, minimizes interference with the internal operations of commonwealth functions while maintaining the enforceability of the consent decree.

Petitioners have not offered a single case on the issue of the contempt or on the issue of the contempt sanction which has material facts even remotely comparable to these material facts. Therefore, there is no conflict between the Third Circuit and the other Circuits. Since petitioners have presented no other reasons which would warrant the granting of a Writ the petition should be denied.

A. District Court Did Not Commit Error in Declaring Commonwealth Defendants to Be in Civil Contempt.

A party violating a consent decree judgment is subject to the same powers by which a court protects all its judgments including the power of contempt under 18 U. S. C. § 401. *Interdynamics, Inc. v. Wolf*, 653 F. 2d 93, 96-96 (3d Cir. 1981). And state defendants who violate consent decree judgments are not immune from contempt citations. *Hutto v. Finney*, 437 U. S. 678, 690-91 (1978); *Vecchione v. Wohlgemuth*, 558 F. 2d 150, 158 (3d Cir. 1977), *cert. den.* 434 U. S. 943 (1977).

The named defendants in these consolidated actions are the Commonwealth of Pennsylvania,[8] the Secretary of the Pennsylvania Department of Transportation (PennDOT) and the Secretary of the Department of Environmental Resources (PennDER). They were all declared

8. The Commonwealth of Pennsylvania incorporates both the executive and legislative branches of government. Because the Commonwealth is the Sovereign it is immunized from actions brought in federal court by the 11th Amendment, *Edelman v. Jordan*, 415 U. S. 651 (1974), except in cases where the United States is the plaintiff, *United States v. Mississippi*, 380 U. S. 128, 140-141 (1965), or in cases where there has been a final judgment, *Toll v. Moreno*, — U. S. —, 50 U. S. L. W. 4380, 4384 (6/23/82). The executive officer defendants are not immunized by the 11th Amendment in respect to prospective relief. *Edelman v. Jordan*, *supra*.

to be in civil contempt for failure to comply with their consent decree obligations to implement an I/M program because the Commonwealth was "physically, practically and financially able to comply . . ." *D. V. C. C. C. A. v. Commonwealth*, 533 F. Supp. 869, 881 (E. D. Pa. 1982) (Appendix, p. 22a).

The defendants contend that the contempt citation should be reversed because: (1) it impermissibly "interfere[s] with the state's right to control its own legislative process" (Pet. Br. p. 10); (2) it conflicts with the view of *New York State Ass'n for Retarded Children, Inc. v. Carey*, 631 F. 2d 1162 (2d Cir. 1980) (Pet. Br. p. 17); and (3) it was impossible for defendants to comply. The defendants allegations are incorrect in all three respects.

1. The District Court's Contempt Citation Does Not Interfere With the Commonwealth's Appropriation Process.

The consent decree of August 28, 1978 provided that:

> "The provision of this Consent Decree apply to the Defendants *Commonwealth of Pennsylvania*, Secretary of PennDOT and the Secretary of PennDER and to each of the officers, agents, employees and successors of said parties." (Emphasis added)

Consent Decree, para. 2. The Commonwealth was represented throughout this action by the Pennsylvania Department of Justice, the Department which had the power and duty to represent the Commonwealth.[9] *Vecchione*

9. The Pennsylvania Administrative Code § 903, 71 P. S. 293, which was in effect when this action was initiated and when the consent decree was entered, provided in relevant part, as follows:

> "The Department of Justice shall have the power, and *its duty shall be:*
>
> • • •

v. Wohlgemuth, 558 F. 2d 943 (1977); *D. V. C. C. C. A. v. Commonwealth*, 674 F. 2d 970 (3rd Cir. 1982).

Not only was the Department of Justice authorized to represent the Commonwealth in this action, it was also authorized to agree, on behalf of the Commonwealth, to undertake an I/M program because the legislature had already enacted legislation authorizing the executive branch to implement I/M. *Burd v. Commonwealth of Pennsylvania*, 443 A. 2d 1197 (Pa. Cmwlth. Ct. 1982). And by way of endorsing the consent decree the legislature, thereafter, had appropriated funds for I/M program implementation in the budgets for fiscal years 1980, 1981 and 1982. Thus there can be no meaningful challenge to the validity of the consent decree.

Though the defendants do not challenge the validity of the decree they argue, rather, that it is unenforceable. (Pet. Br., p. 11). They argue, in effect, that any final judgment, even a consent decree voluntarily entered into by the Commonwealth, constitutes an obligation only to the extent which the Commonwealth unilaterally wishes to assume. Such a view of the obligations of a federal judgment is contrary to the principle of separation of powers, *Commonwealth v. Sutley*, 378 A. 2d 780, 784 (Pa 1977); is contrary to the Supremacy Clause, United States Constitution, Article VI Cl. 2, *United States v. Peters*, 9 U. S. 115, 136 (1809); *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 442 U. S. 658, 695 (1979); and is contrary to the Contract Clause, U. S. Constitution Article I Section 10 Cl. 1, and to the Contract Clause of the Pennsylvania Constitution, Article 1, Section 17.

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9. (Cont'd.)

(b) To represent the Commonwealth . . . in any litigation to which the Commonwealth . . . may be a party." (Emphasis added)

Subsequent to the consent decree the Commonwealth used the decree to qualify for conditioned federal-aid highway funds under Section 176(a), Clean Air Act, 42 U. S. C. 7506(a), (see section B(1) infra). Based on this qualification the Commonwealth since 1979 has received more than one billion dollars in highway construction funds.[10] The defendants' contention that the consent decree is unenforceable despite these circumstances makes a mockery of the consent decree and would suggest that the Commonwealth was guilty of deception in accepting the conditioned federal-aid highway funds. *Cf. Euresti v. Stenner*, 458 F. 2d 1115 (10th Cir. 1972).

Undaunted, the defendants also allege that the contempt order interferes with the Commonwealth's right to control its own appropriation process and thereby it transgresses the principle of federalism (Pet. Br. p. 10-13). The defendants, apparently, overlooked the district court's refusal to invalidate HB 456 precisely because the court declined to interfere with the Commonwealth's appropriation process. (Appendix, p. 19a, n. 8) and because the Court was fully aware of the admonitions in *National League of Cities v. Usery*, 426 U. S. 833 (1976). Indeed, the sanction imposed by the court scrupulously avoids any requirement that the Commonwealth appropriate any funds to implement the I/M program. Any complaint, therefore, that the contempt citation interferes with the Commonwealth's appropriation process has a hollow ring.

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10. There can be no doubt that the Commonwealth's legislature has been fully aware of the receipt of these conditioned funds because the legislature has controlled and appropriated these funds since 1979. *Shapp v. Sloane*, 391 A. 2d 595, 606 (Pa. 1978), *appeal dismissed sub nom., Thornburgh v. Casey*, 440 U. S. 942 (1979); Pa. Const. Article 3, Section 24.

2. The District Court's Contempt Citation Is Not in Conflict With *New York State Ass'n For Retarded Children, Inc. v. Carey*, 631 F. 2d 162 (2nd Cir. 1980).

Defendants allege that the I/M case contempt citation conflicts with *New York State Ass'n For Retarded Children, Inc. v. Carey*, 631 F. 2d 162 (2d Cir. 1980). (Pet. Br. p. 17). Analysis reveals, however, that significant differences in the material facts between these cases accounts for their respective outcomes.

In *Carey* state executive officers, but not the state, entered into a consent decree obligating the officers to seek legislative funding for a hospital Review Panel created by the decree. When the legislature refused to appropriate funds for the Review Panel the district court threatened to declare the officers in contempt and to impose appropriate sanctions if funding was not provided. *New York State Ass'n For Retarded Children, Inc. v. Carey*, 492 F. Supp. 1110, 1115 (E. D. N. Y. 1980). The Second Circuit reversed on the ground that defendants, in fact, had fulfilled their decree obligation to seek legislative funding. 631 F. 2d at 166. Since the state was not a defendant nor a party to the consent decree the Second Circuit had no occasion to discuss the legal implications of such a circumstance.

In contrast to *Carey*, the I/M defendants did include the Commonwealth in addition to the state executive officers; and in contrast to *Carey* the I/M consent decree expresses the defendants' obligations in mandatory rather than precatory terms. Thus the I/M consent decree does not request the defendants to seek funding for the I/M program but, instead, it mandates that the defendants shall implement the program by a date certain.[11] And

11. The consent decree, paragraph 4, provides that "Defendant PennDOT shall immediately proceed toward implementation of a

in further contrast to *Carey*, where the state legislature had not authorized the establishment of the hospital Review Panel, the Pennsylvania legislature had in fact already authorized the I/M program when the parties entered into the consent decree.

Additionally, the consent decree pledge of the defendants to implement the I/M program served to qualify the Commonwealth for a billion dollars in conditioned federal-aid highway funds under Section 176(a) of the Clean Air Act Amendments of 1977, 42 U. S. C. 7506(a). (See section B(1) infra). In contrast, the *Carey* consent decree was not the predicate for receiving any conditioned federal funds and no federal funds had been provided to the state as a consequence of the *Carey* consent decree.

In sum, the material facts in *Carey* are so substantially different from those in the I/M case that there can be no basis for considering the Third Circuit's I/M opinion to be in conflict with the Second Circuit's opinion in *Carey*.

3. The Commonwealth's Self Imposed Inability to Comply With the Consent Decree Does Not Excuse Its Civil Contempt.

The inability of a defendant to comply with a judgment is well recognized as a defense to a charge of civil contempt. *Maggio v. Zietz*, 330 U. S. 56 (1948), *Shillitani v. United States*, 384 U. S. 364 (1966). But the defense of impossibility rests on circumstances beyond the control of the defendant.

The failure of the defendants to comply with the consent decree judgment resulted from the enactment of

11. (Cont'd.)

private garage [I/M program] system" if the legislature does not authorize a franchise system by July 1, 1979.

HB 456, a circumstance fully within the control of the Commonwealth. Thus, the circumstances precluding compliance with the consent decree is not beyond the control of the Commonwealth and therefore cannot serve to protect the defendants from the contempt citation.

B. The Contempt Sanction Does Not Abuse the Court's Discretion Nor Does It Conflict With Decisions of the Other Circuits.

District courts are empowered to impose coercive sanctions in cases of civil contempt. *United States v. United Mine Workers of America*, 330 U. S. 258, 303-4 (1947). In fashioning a contempt sanction a court sits in equity with wide discretion to blend "what is necessary, what is fair, and what is workable." *Lemon v. Kurtzman*, 411 U. S. 192, 200 (1973).

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The district court (Bechtle, J.) was particularly careful to fashion a contempt sanction which would fully respect the sovereign rights of the Commonwealth while simultaneously coercing the Commonwealth to purge its contempt. The sanction chosen (Appendix p. 32a) accomplished these objectives. It enjoined the U. S. Secretary of Transportation from awarding grants of federal-aid highway funds, with certain exceptions, for the 10 counties affected by the lawsuit; but it did not impose any affirmative obligations on the Commonwealth nor did it require the Commonwealth to expend any funds. Admittedly, the sanction was modeled after Section 176(a) of the Clean Air Act, 42 U. S. C. 7506(a).

Notwithstanding, defendants contend the sanction is an abuse of the court's discretion because: (1) the court has no power to enjoin federal-aid highway funds (Pet. Br. p. 19); (2) the court cannot impose a sanction which

affects the public (Pet. Br. p. 23); and (3) the court invalidly intrudes on the operations of the Commonwealth (Pet. Br. p. 26).

The Commonwealth's allegations are incorrect.

1. The Contempt Sanction Does Not Conflict With *State Highway Commission of Missouri v. Volpe*, 479 F. 2d 1099 (8th Cir. 1973).

Contrary to the defendant's allegation, *State Highway Commission of Missouri v. Volpe*, 479 F. 2d 1099 (8th Cir. 1973) is not relevant to the contempt sanction imposed on the Commonwealth defendants. *Volpe* held that the executive branch of the federal government did not have the authority to impound federal-aid highway funds for the purpose of curbing inflation, 479 F. 2d at 1108, because the Constitution granted the power to appropriate funds for road construction to the Congress, U. S. Const. Article 1, Section 8, Clause 6, and Congress had not granted the executive a discretionary right to withhold these appropriations for purposes remote and unrelated to highway construction.

In contrast to *Volpe*, the district court's sanction withholding certain federal aid highway funds was fully in accord with Section 176(a) of the Clean Air Act, 42 U. S. C. 7506(a),[12] wherein Congress conditioned federal-

12. Section 176(a), 42 U. S. C. 7506(a) provides as follows: The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

(1) in which any national primary ambient air quality standard has not been attained,

aid highway grant approvals on state implementation of an I/M program, 42 U. S. C. 7502(b)(11)(B) and state commitment to finance that program. 42 U. S. C. 7502 (b)(7). Legislative enactment of HB 456 constituted a rescission of the Commonwealth's pledge to implement the I/M program required by the consent decree. Thus the contempt sanction cutting-off highway funds was in keeping with Congressional intent and purpose. It follows, therefore, that the consent decree injunction is in no fashion comparable to the executive branch impoundment of funds at issue in *Volpe*.

Defendants also allege that the district court was not empowered to impose Section 176(a) sanctions because Congress had entrusted that function to the executive branch. (Pet. Br. pp. 21, 22). The court, however, took pains to explain that the contempt sanction was, indeed, "suggested" by Section 176(a) but that the court was not imposing Section 176(a) as the contempt sanction. (Appendix 25a, 37a). Defendants contend that a court abuses its discretion if it fashions a civil contempt sanction in the image of a statutory enactment designed for the same purpose. Such a contention is wooden. Defendants cite no case to support their contention.

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12. (Cont'd.)

(2) where transportation control measures are necessary for the attainment of such standard, and

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

2. The Contempt Sanction Does Not Conflict With *Gautreaux v. Romney*, 457 F. 2d 124 (7th Cir. 1972).

Defendants allege that the district court did not consider the effects of the contempt sanction on the public and therefore the contempt sanction is in conflict with *Gautreaux v. Romney*, 457 F. 2d 124 (7th Cir. 1972). The defendants are mistaken.

It cannot be doubted that the cut-off of highway construction funds will cause some inconvenience to the public and will affect employment conditions in the areas covered by the sanction. By enacting Section 176(a) Congress established a policy giving primacy to air quality, because of its importance to public health, and making federal assistance for highway construction dependent on state cooperation with the national effort to achieve cleaner air.

This was not an arbitrary Congressional decision. It was based on the recognition that the extension of our highway system tended to increase carbon monoxide and ozone pollution and, therefore, that public health could be protected only if the states undertook those pollution abatement systems, such as the I/M program, which could compensate for the added pollution emissions that accompany the extension of the highway system. 123 Cong. Rec. 9168 (1977).

In the light of this Congressional policy it cannot be said that the district court's contempt sanction was neglectful of the public's interests.

And the contempt sanction is not in conflict with *Gautreaux v. Romney, supra*. *Gautreaux* invalidated an injunction withholding Model Cities grants as an equitable remedy for racial discrimination practices in Chicago's public housing program because the Model Cities program

had not been found tainted and the receipt of Model Cities grants had not been conditioned by Congress on local housing policies. *Gautreaux*, therefore, is distinguishable from the I/M case because the contempt sanction in the I/M case withholds grants which were explicitly conditioned on state implementation of the I/M program. Accordingly, no conflict exists between *Gautreaux* and the decision in the I/M case.

3. The Contempt Sanction Does Not Impermissibly Intrude on the Operations of the Commonwealth and Does Not Conflict With *Rizzo* v. *Goode*, 423 U. S. 362 (1976).

The contempt sanction enjoined the U. S. Secretary of Transportation from approving federal-aid highway grants but it exempted from the injunction federal-aid highway grants intended for "safety, mass transit or transportation improvement projects related to air quality improvement or maintenance." (Appendix, p. 33a). Because the injunction was selective the Court had need to establish a procedure through which to administer it. The procedure (Appendix, p. 32a) provides that the U. S. Secretary of Transportation certify to the court all grants which he approves and furnish the court with a brief statement outlining the factual grounds for the approval. The Secretary's approvals become final in 30 days unless within that time the court issues an order staying the approval.

Defendants contend that this procedure impermissibly intrudes on the operations of the Commonwealth (Pet. Br., p. 26a) and that it, therefore, conflicts with *Rizzo* v. *Goode*, 423 U. S. 362 (1976).[13] In *Rizzo* this Court in-

13. Defendants also cite *Bell* v. *Wolfish*, 441 U. S. 520 (1979), in which a district court order establishing prison regulations for pre-trial detainees was invalidated because the court was too en-

validated an equitable remedy because it "significantly revis[ed] the internal procedures of the Philadelphia police department" sharply limiting the department's latitude in the operation of its internal affairs. 423 U. S. at 379. The contempt sanction in the I/M case, in contrast, does not revise or amend the internal procedures of any branch or department of the Commonwealth.

The contempt sanction cuts-off certain federal-aid highway grants. The procedure for administering the sanction, of which the defendants complain, is not the sanction. And the procedure does not interfere with the Commonwealth's internal operations since it does not relate to those operations in any manner. Rather than being excessively intrusive the procedure established by the Court is completely non-intrusive and therefore is not an abuse of the court's discretion.

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13. (Cont'd.)

meshed "in the minutiae of prison operations". 441 U. S. at 562. The I/M contempt sanction, in contrast, contains no regulations in respect to the Commonwealth's internal operations and therefore no conflict exists between these decisions.

CONCLUSION

For the foregoing reasons Respondents, Delaware Valley, respectfully request this Court deny the Petition for a Writ of Certiorari to review the judgement of the Court of Appeals.

Respectfully submitted,

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